

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CASE NO. 2:10-cr-20005

Plaintiff,

HONORABLE NANCY G. EDMUNDS

-VS-

D-1 UMAR FAROUK ABDULMUTALLAB,

Defendant.

**GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCLOSURE
OF GRAND JURY TRANSCRIPTS AND EXHIBITS**

The United States respectfully submits this opposition to the defendant's Motion for the Disclosure of Grand Jury Transcripts and Exhibits. The defendant's motion should be denied because he has not stated a particularized and compelling need for grand jury material.

"The 'General Rule of Secrecy' that normally prohibits disclosure of matters occurring before grand juries reflects a 'strong' and 'long-established policy' from which departures are permitted, the Supreme Court has said, only in cases of 'compelling necessity;' *i.e.*, where there is proof that without access to the grand jury materials a litigant's position would be 'greatly prejudiced' or 'an injustice would be done.'" *In Re Grand Jury Proceedings*, 841 F.2d 1264, 1267-68 (6th Cir. 1988). The defendant's motion states no such compelling necessity.

The defendant's motion requests that the Court "issue an order requiring disclosure of all grand jury transcripts and exhibits." Def. Motion at 7. Federal Rule of Criminal Procedure 6(e)(3)(E) creates only limited exceptions to the general rule of secrecy surrounding grand jury material. The defendant relies on only two of these exceptions as a basis for his motion.

The first exception cited by the defendant permits the Court to authorize disclosure of grand jury material “preliminarily to or in connection with a judicial proceeding.” Fed. R. Crim. Pro. 6(e)(3)(E)(i). The Supreme Court has held that grand jury material can only be disclosed under this provision if the moving party can show “that the material they seek is needed to avoid a possible injustice in *another judicial proceeding*, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed.” *Douglas Oil Co. of Cal. v. Petrol Stops Northwest*, 441 U.S. 211, 222 (1979). In the present case, the defendant is not seeking the grand jury material for use in “another judicial proceeding.” *Id.* He is therefore not entitled to grand jury material under Rule 6(e)(3)(E)(i). *See United States v. Abusaid*, 256 Fed.Appx. 289, 290-291 (11th Cir. 2007) (defendant not entitled to grand jury material because he “was not involved in any other judicial proceeding before the district court when he submitted his motion and failed to specify how the material sought would help him obtain relief even in some future action”).

The second exception cited by the defendant permits the Court to disclose grand jury material “at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” Fed. R. Crim. Pro. 6(e)(3)(E)(ii). To fall within any of the enumerated exceptions in Rule 6(e)(3)(E), the defendant’s alleged need for the grand jury material “must be shown with particularity.” *United States v. Proctor & Gamble Co.*, 356 U.S. 677, 682 (1958). It is well-established that bare allegations are not sufficient to meet the particularity requirement. *United States v. Garcia*, 311 Fed.Appx. 314, 317 (11th Cir. 2009) (“A party seeking grand jury material must show a ‘particularized need’ for the documents; generalized allegations will not suffice.”); *United States*

v. TePoel, 317 Fed.Appx. 549, 551 (7th Cir. 2009) (“vague grounds for disclosure does not even come close to making the necessary particularized showing”). In the present case, the defendant does not allege a single fact that would support the notion that the indictment should be dismissed because of a matter that occurred before the grand jury. The defendant’s motion is simply void of any specific facts and therefore does not fall within the exception in Rule 6(e)(3)(E)(ii).

The defendant’s only articulated reason for requesting the grand jury material is “[p]reventing untruthful and inconsistent testimony amongst potential witnesses” Def. Motion at 6. The defendant claims that he needs the grand jury material for “impeaching witnesses” and to “more effectively and efficiently cross-examine witnesses.” *Id.* The government represents to the Court that no grand jury witness in this case will testify at trial. The defendant therefore does not have a “compelling need” for grand jury material for impeachment.

CONCLUSION

For the foregoing reasons, the defendant's Motion For Disclosure of Grand Jury Transcripts and Exhibits should be denied.

Respectfully submitted,

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Dated: August 26, 2011

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2011, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to Anthony Chambers. I further certify that I have caused a copy of this filing to be delivered and mailed to the defendant, Umar Farouk Abdulmutallab, Register No. 44107-039, Federal Detention Center, East Arkona Road Milan, Michigan.

s/ Lindsay Black
Legal Assistant
U.S. Attorney's Office